IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 812 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

JAYANTILAL GAMBHIRJI BAROT

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 15/04/2004

ORAL JUDGEMENT

1. Rule. Mr.Rathod, learned Counsel waives service of rule on behalf of the respondent.

2. With the consent of the parties the matter is taken up for final hearing.

3. The short facts of the case are that the respondent raised the dispute under the Industrial Disputes Act, 1947 after a period of about 17 years, which came to be referred to the Labour Court for adjudication being Reference (LCK) No.626/1998. It appears that before the Labour Court the matter proceeded ex-parte and the award came to be passed on 26-6-2002 in Reference (LCK) No.626/1998, whereby reinstatement is ordered without backwages. The said award of the Labour Court is challenged by the petitioner in this petition which is filed in December, 2003. When the matter was taken up for hearing for the first time on 23-1-2004, this Court has passed the following order:

> " Primafacie, it appears that there is callous approach on the part of the officers of the petitioner-corporation at the stage of defending the proceedings in Ref (LCK) No.626/98 as well as in challenging the award, dated 26.2.2002 after a period of about one and half years though there is a good case on merits.
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> 2. Hence, Rule. Ad interim relief in terms of para 7(C). Notice as to interim relief returnable on 3.3.04.
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> 3. It is further directed that the Managing Director of the petitioner corporation shall hold inquiry against the concerned officer of the corporation who has remained negligent in not properly defending the proceedings in Ref(LCK) No.626/98 in the Labour Court, Kalol and shall also inquire regarding the conduct on the part of the concerned officer in not challenging the award, dated 26.2.2002 for a period of one and half years. Such report also shall include as to why exemplary costs should not be awarded and the same should not be recovered from the salary of the erring officer/s. Such report shall be produced on or before 1.3.2004. If the report is not submitted, the Managing Director of the petitioner corporation shall personally remain present. DS permitted."

4. Pursuant to the order passed by this Court of holding inquiry, the report is submitted of the inquiry by the Vice Chairman and Managing Director of the petitioner Corporation. The said report inter alia, contains that the concerned officers of the petitioner Corporation have remained negligent in properly defending the proceedings. Therefore, it appears there was callous

approach on the part of the concerned officers of the corporation in not properly defending the proceedings before the Labour Court as well as in challenging the award before this Court.

5. It is the case of the petitioner that the workman has not completed 240 days of service with the petitioner corporation and had the matter proceeded on merits, the award would not have been passed.

6. Mr.Rathod, learned Counsel appearing for the respondent workman has not accepted the said position, but in his contention it was the duty of the ST Corporation to defend the proceedings and even as per the submission of Mr.Rathod, the award has been challenged after a period of two years. Mr.Rathod submitted that such long delay may not be condoned for entertaining the petition as well as the award passed by the Labour Court may not be interfered with merely because there is a good case on merits. However, ultimately Mr.Rathod, under the instructions from his client, declared before the Court that if this Court is inclined to impose a reasonable cost by way of compensation for not defending the proceedings before the Labour Court as well as the delay caused in the present petition, the respondent workman is agreeable for retrial of the reference.

7. I would have recorded the reasons further for entertaining the petition, but it appears that the delay has been caused on account of the callous and negligent approach on the part of the concerned officers of the Corporation. The petitioner is a public corporation and, therefore, if such an ex-parte award is allowed to operate, it may be against the larger public interest and on the other hand if the matter is considered for compensating the default caused in not defending the proceedings and delay caused in this petition, the same would meet with the ends of justice.

8. Normally the matter is to be considered on merits after giving proper opportunities to both the sides. Here the opportunity was given, but the same was not availed of and, therefore, if the action of not defending the proceedings is leniently viewed or if the delay caused in preferring this petition is leniently viewed, it would encourage the tendency on the part of the litigant to proceed further after the ex-parte order to be passed. The petitioner corporation, can not be allowed to take premium of its own default, may be through its own officers and, therefore, even if the delay is to be condoned for reconsideration of the matter

on merits, it would be just and proper to award the cost of Rs.10,000/- as compensation to the respondent workman being Rs.5,000/- for not properly defending the proceedings before the Labour Court and Rs.5,000/- for delay caused in preferring this petition.

9. Under the above circumstances, I leave the matter at that stage, so far as the subject matter of this petition if concerned. However, at the same time, the Corporation should be at liberty to recover the amount of Rs.10,000/= from the concerned officer(s) of the Corporation, who remained negligent in defending the proceedings before the Labour Court as well as in challenging the impugned award before this court.

10. In view of the aforesaid discussion, the impugned award passed by the Labour Court dated 26-6-2002 in Reference (LCK) 626/1998 is quashed and set aside with the directions to the Labour Court to retry the Reference after giving opportunity of hearing to both the sides on condition that the petitioner pays the cost of Rs.10,000/= to the respondent workman, within a period of one month from today, towards the cost for not defending the proceedings in the Labour Court and for the delay caused in preferring the present petition and it is further directed that the Labour Court shall decide the Reference as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court. It is clarified that it will be open to the petitioner Corporation to recover the amount of Rs.10,000/= from its concerned erring officer(s) after following the procedure in accordance with law.

11. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

22-4-2004 (Jayant Patel, J.)

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